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No. 86-554

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

SUSAN STEWART, *et al.*,
Petitioners,

v.

NEW PRAIRIE CLASSROOM TEACHERS ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Indiana

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RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether this Court should review the decision of the Court of Appeals of Indiana, which held that there was sufficient evidence in the record to justify the representation [*i.e.*, agency] fee that petitioners were ordered to pay to their exclusive collective bargaining representative, respondent New Prairie Classroom Teachers Association.

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	8
I. THE CONCLUSION OF THE COURT OF APPEALS OF INDIANA THAT NPCTA HAD PRESENTED SUFFICIENT EVIDENCE OF ITS CHARGEABLE EXPENDITURES TO JUSTIFY THE REPRESENTATION FEE AWARDED BY THE TRIAL COURT DOES NOT WARRANT REVIEW BY THIS COURT	9
II. THE CONCLUSION OF THE COURT OF APPEALS OF INDIANA THAT THERE WAS SUFFICIENT EVIDENCE IN THE RECORD TO INCLUDE PAYMENTS TO ISTA AND NEA IN THE REPRESENTATION FEE DOES NOT WARRANT REVIEW BY THIS COURT	14
CONCLUSION	16

TABLE OF AUTHORITIES

Cases Page

Abood v. Detroit Board of Education, 431 U.S. 209 (1977) ..... *passim*
Anderson Federation of Teachers, Local 519 v. Alexander, 416 N.E.2d 1327 (Ind. App. 1981) 3
Black v. Cutter Laboratories, 351 U.S. 292 (1956) 12
Champion v. State of California, 738 F.2d 1082 (9th Cir. 1984), *cert. denied*, 469 U.S. 1229 (1985) 7
Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837 (1984) 12
Chicago Teachers Union v. Hudson, 475 U.S. ——, 106 S. Ct. 1066 (1986) ..... *passim*
Ellis v. Railway Clerks, 466 U.S. 435 (1984) ..5, 9, 12, 16
Fort Wayne Education Association, Inc. v. Goetz, 443 N.E.2d 364 (Ind. App. 1982), *transfer denied* 2, 6, 11, 12
Machinists v. Street, 367 U.S. 740 (1961) 7, 13
New Prairie Classroom Teachers Association v. Stewart, 460 N.E.2d 149 (Ind. App. 1983), *transfer denied* 2, 3
Railway Clerks v. Allen, 373 U.S. 113 (1963) 10, 13
Robinson v. State of New Jersey, 741 F.2d 598 (3d Cir. 1984), *cert. denied*, 469 U.S. 1228 (1985) 7

Statutes

Indiana Certificated Educational Employee Bargaining Act, Ind. Code § 20-7.5-1-1 *et seq.* ..... *passim*
Railway Labor Act, 45 U.S.C. § 152, Eleventh.... 13
Michigan Public Employment Relations Act, Mich. Comp. Laws § 423.210(1)(c) 13
New Jersey Employer-Employee Relations Act 34:13A-5.5(b) 13

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent New Prairie Classroom Teachers Association submits that the Petition for a Writ of Certiorari should be denied, and files this brief in opposition to the Petition.

STATEMENT OF THE CASE

Since at least 1974, respondent New Prairie Classroom Teachers Association ("NPCTA") has been recognized, pursuant to Indiana's Certificated Educational Employee Bargaining Act, Ind. Code § 20-7.5-1-1 *et seq.*, as the exclusive representative for a bargaining unit consisting of the teachers employed by the New Prairie

United School Corporation ("School Corporation"). Petitioners are thirty-six teachers who were employed by the School Corporation during the 1980-81 school year, and therefore were members of the NPCTA bargaining unit.

In its capacity as exclusive representative, NPCTA entered into a collective bargaining agreement with the School Corporation covering the period from July 1, 1980 through June 30, 1983. As permitted by Indiana law, that agreement included a representation fee provision [1] —*i.e.*, a provision that required bargaining unit employees who chose not to join NPCTA "to pay a representation fee to the Association, including the Indiana State Teachers Association and the National Education Association." Appendix to Petition ("App.") 2a. The Indiana State Teachers Association ("ISTA") and the National Education Association ("NEA") are, respectively, NPCTA's state and national parent organizations. As part of its affiliation relationship with ISTA and NEA, NPCTA has a "unified" membership structure, which means that a teacher may not become a member of NPCTA without also joining, and paying dues to, ISTA and NEA. App. 14a. The collective bargaining agreement further provided that no feepayer "should be forced to contribute financial support to political or ideological activities of the Association unrelated to collective bargaining, contract administration, and grievance adjustment or unrelated to its duties as exclusive bargaining representative." App. 3a.

This representation fee provision was not of the classic variety. Unlike the typical arrangement—pursuant to

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[1] *See New Prairie Classroom Teachers Association v. Stewart ("Stewart I")*, 460 N.E.2d 149 (Ind. App. 1983), *transfer denied* ("The agency shop agreement between NPCTA and the school board as to payment of representation fees to NPCTA was authorized by law, constitutional, and binding upon non-member teachers"); *Fort Wayne Education Association, Inc. v. Goetz*, 443 N.E.2d 364 (Ind. App. 1982), *transfer denied.*

which the fee automatically is deducted from the nonmember employee's salary, or payment is made a condition of employment for which a noncomplying employee may be terminated—NPCTA could enforce this contractual obligation only by suing to recover the amount of any unpaid fees.[2] Accordingly, when petitioners refused to pay their representation fees, NPCTA filed individual lawsuits against them in the Small Claims Division of the La Porte County Court. After the suits were consolidated, and after initial appellate proceedings established the legality of the representation fee provision in the collective bargaining agreement,[3] the consolidated case was remanded to the trial court for a determination of the proper amount of the representation fee for the 1980-81 school year.

Trial was held on May 7, 1984. The only evidence received by the court was testimony and documents introduced by NPCTA; petitioners presented no witnesses and introduced no documents. Three witnesses testified on behalf of NPCTA. These witnesses described in detail, with appropriate documentation, the activities engaged in by NPCTA, ISTA, and NEA during the 1980-81 school year; the amounts expended for each of these activities; and the specific relationship between these expenditures and the duties performed by NPCTA as the exclusive representative.[4] In addition to presenting evidence regard-

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[2] The Indiana courts have held that it would violate state law to make payment of a representation fee a condition of employment enforceable by termination. *See Anderson Federation of Teachers, Local 519 v. Alexander*, 416 N.E.2d 1327 (Ind. App. 1981).

[3] *See Stewart I*, note 1 *supra*. In their Petition for a Writ of Certiorari, petitioners do not—and could not—challenge the basic constitutionality of collecting representation fees from nonmember employees. *See Abood v. Detroit Board of Education*, 431 U.S. 209 (1977).

[4] These duties included, *inter alia*, bargaining with the School Corporation over "salary, wages, hours, and salary and wage related fringe benefits," Ind. Code § 20-7.5-1-4; engaging in discussions

ing the expenditures made by NPCTA, ISTA, and NEA for activities that were *included* in computing the representation fee that was sought from petitioners, NPCTA also presented evidence regarding those expenditures that it had excluded from the representation fee because it did not consider them to be sufficiently related to collective bargaining.

After reviewing the evidence presented by NPCTA, and the briefs that were filed by both parties, the trial court issued its opinion on June 22, 1984. The court began by declaring that:

> The scope of the fair-share representation fee is not limited solely to contract negotiation, but encompasses numerous statutory duties with their attendant responsibilities and activities. NPCTA's affiliation with NEA and ISTA provides necessary and vital resources. Without its affiliation with these associations, NPCTA could not meet its legal obligations. App. 14a.

The court then held that each petitioner was liable to NPCTA for a representation fee of $190.16 for the 1980-81 school year. Specifically, the court found:

> By a preponderance of the evidence, the plaintiff has established the amount of the fair-share fee for the school year 1980-81 assessable against each defendant to be in the sum of One Hundred Ninety Dollars and Sixteen Cents ($190.16). App. 16a.

This representation fee of $190.16 was comprised of $20.00 for NPCTA, $128.45 for ISTA, and $41.71 for NEA. App. 15a.

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with the School Corporation concerning "working conditions, other than [salary, wages, hours, and fringe benefits]; curriculum development and revision; textbook selection; teaching methods; selection, assignment, or promotion of personnel; student discipline; expulsion or supervision of students; pupil-teacher ratio; class size or budget appropriations," *id.* § 20-7.5-1-5; and processing grievances against the School Corporation pursuant to the negotiated grievance arbitration provision, *id.* § 20-7.5-1-4.

Petitioners appealed to the Court of Appeals of Indiana, raising several issues that were consolidated by that court into two questions: (1) whether the trial court erred in calculating the representation fee; and (2) whether the trial court erred in finding that the representation fee should include payments to ISTA and NEA. *See* App. 2a.

On the first issue, the Court of Appeals set forth the applicable standard for determining whether expenses are chargeable to employees who refuse to join the exclusive representative by quoting at length from this Court's decision in *Ellis v. Railway Clerks*, 466 U.S. 435 (1984):

> [T]he test must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of performing the duties of an exclusive representative of the employees in dealing with the employer on labor-management issues. Under this standard, objecting employees may be compelled to pay their fair share of not only the direct costs of negotiating and administering a collective bargaining contract and of settling grievances and disputes, but also the expenses of activities or undertakings normally or reasonably employed to implement or effectuate the duties of the union as exclusive representative of the employees in the bargaining unit. App. 6a (quoting *Ellis*, *supra*, 466 U.S. at 448).

The court noted that the collective bargaining agreement was fully consistent with this standard because it expressly "acknowledge[d] that objecting teachers should not be forced to pay for political or ideological activities 'unrelated to collective bargaining, contract administration, and grievance adjustment or unrelated to [NPCTA's] duties as exclusive bargaining representative.'" App. 6a. And, consistent with prior decisions of this Court and the Indiana courts, the Court of Appeals expressly stated that "NPCTA, ISTA, and NEA must prove the proportion of their total expenditures which were chargeable to objecting employees." App. 8a. *See Fort Wayne Educa-*

tion Association, Inc. v. Goetz, 443 N.E.2d 364, 373 (Ind. App. 1982), *transfer denied* ("the burden [is] upon the Association to show nonpolitical use of the funds").

Applying the foregoing standards to the record before it, the Court of Appeals concluded that NPCTA had met its burden of proof. Specifically rejecting petitioners' argument that "certain expenditures made by each organization" and included in the representation fee were not properly chargeable to objecting feepayers,[5] App. 8a, the appellate court held that there was sufficient "evidence of probative value to support the judgment" of the trial court, App. 9a.

With regard to the second issue raised on appeal—whether the representation fee should include payments to ISTA and NEA—the Court of Appeals also found sufficient evidence in the record to support the trial court's judgment. After first observing "that NPCTA had been elected exclusive representative in its affiliated status" with ISTA and NEA, and that "the collective bargaining agreement [itself] provides . . . that the representation fee shall include payments to ISTA and NEA," App. 4a-5a, the court rejected petitioners' contention that ISTA and NEA "allegedly provided no collective bargaining services to the teachers during the term for which payment is being sought," App. 4a. To the contrary, and on the basis of the evidence presented at trial, the court found that ISTA and NEA provided employees in the bargaining unit with numerous services that properly could be charged to objecting feepayers. As the court put it:

> [O]ne purpose of these payments [to ISTA and NEA] was to secure the availability of services from

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[5] These expenditures included the costs of lobbying governmental agencies on matters germane to NPCTA's duties as exclusive representative, App. 9a-10a; the costs of obtaining expert assistance from ISTA and NEA, App. 10a-11a; and the costs of attending ISTA meetings, App. 11a.

these organizations. As the United States Supreme Court has recognized,

> "[t]he tasks of negotiating and administering a collective-bargaining agreement and representing the interests of employees in settling disputes and processing grievances are continuing and difficult ones. They often entail expenditure of much time and money. *See* [*Machinists v.*] *Street*, 367 U.S. [740, 760 (1961)]. The services of lawyers, expert negotiators, economists, and a research staff, as well as general administrative personnel, may be required."

Abood v. Detroit Bd. of Education (1977), 431 U.S. 209, 221. Were NPCTA to hire local lawyers, negotiators or researchers, there would be little dispute that they could charge a fair share of the cost to the non-member teachers. Instead, they have chosen to pay a fixed, yearly amount for the continued availability of such services. The teachers cannot force NPCTA to abandon this approach, nor should they be allowed to benefit from the services of ISTA or NEA without paying a fair share of the cost of their continued availability. App. 5a.

The Court of Appeals then turned to the evidence presented in the trial court to identify certain of the specific collective bargaining services that were provided by ISTA and NEA. Dealing first with petitioners' challenge to "the expenditures of ISTA and NEA for lobbying governmental agencies other than the school board," App. 9a, the court stated that it "agree[d] with [the United States Courts of Appeals for both the Third and Ninth Circuits] that lobbying efforts germane to the union's duties as an exclusive representative are chargeable to objecting employees." App. 10a (citing *Robinson v. State of New Jersey*, 741 F.2d 598 (3d Cir. 1984), *cert. denied*, 469 U.S. 1228 (1985), and *Champion v. State of California*, 738 F.2d 1082 (9th Cir. 1984), *cert. denied*, 469 U.S. 1229 (1985)). In addition to these lobbying expenses, the court found that:

> There was evidence at trial that ISTA and NEA, through Unified Services (UniServ), provided other more direct assistance to NPCTA in performing its duties as the teachers' exclusive representative. They provided training and assistance in the area of collective bargaining, as well as other areas. Under [Ind. Code §] 20-7.5-1-5, NPCTA is required to discuss with the school board such topics as curriculum development and textbook selection, and UniServ provided its expertise in these areas. App. 10a-11a.

The Court of Appeals concluded that:

> There was sufficient evidence that the payments to ISTA and NEA were "necessarily or reasonably incurred for the purpose of performing [NPTCA's] duties [as] an exclusive representative." *Ellis, supra,* [466 U.S. at 448]. The trial court did not err in ordering the teachers to reimburse ISTA and NEA. App. 11a.

Petitioners' motion for rehearing was denied, and the Supreme Court of Indiana refused to review the decision of the Court of Appeals.

REASONS FOR DENYING THE WRIT

Petitioners challenge the ruling of the Court of Appeals of Indiana on two grounds: they claim initially that the method used by the court to calculate the amount of the representation fee was incorrect; and they claim, in addition, that the court erred when it included in the representation fee amounts to be paid to ISTA and NEA. As we shall demonstrate, petitioners' first claim is based upon a mischaracterization of the decision of the Court of Appeals, and their second claim relates to conclusions reached by that court with regard to the sufficiency of the evidence presented in the trial court. Neither of these claims presents a question that warrants further review by this Court.

I. THE CONCLUSION OF THE COURT OF APPEALS OF INDIANA THAT NPCTA HAD PRESENTED SUFFICIENT EVIDENCE OF ITS CHARGEABLE EXPENDITURES TO JUSTIFY THE REPRESENTATION FEE AWARDED BY THE TRIAL COURT DOES NOT WARRANT REVIEW BY THIS COURT

The first of the two Questions Presented in the Petition for Certiorari is as follows:

> WHEN A UNION SUES A DISSENTING NONMEMBER TO COLLECT AN UNPAID REPRESENTATION FEE, IS THE MEASURE OF DAMAGES REQUIRED BY THE FIRST AMENDMENT:
>
> A. A Pro Rata Share Of The Proven Costs Of Collective Bargaining; Or
>
> B. Arbitrarily Set Union Dues Less A Union-Determined Rebate Amount?

The clear implication to be drawn from this question is that the Court of Appeals based its affirmance of the trial court's award of a $190.16 representation fee on a "dues-less-rebate" approach. This is not in fact so. Consistent with the decisions of this Court and the courts of Indiana, the Court of Appeals required "NPCTA, ISTA, and NEA [to] prove the proportion of their total expenditures which were chargeable to objecting employees." App. 8a.

This Court's decisions establish that it is constitutional to require bargaining unit employees, over their objection, to support union activities that are related to collective bargaining. *See, e.g., Chicago Teachers Union v. Hudson*, 475 U.S. ——, 106 S. Ct. 1066, 1069 (1986); *Ellis v. Railway Clerks*, 466 U.S. 435, 455-56 (1984); *Abood v. Detroit Board of Education*, 431 U.S. 209, 217-32 (1977). It is equally well-established that, once a representation fee is challenged by a nonmember employee, the union has the burden of proving the appropriate fee amount:

" 'Since the unions possess the facts and records from which the proportion of political to total union expenditures can reasonably be calculated, basic considerations of fairness compel that they, not the individual employees, bear the burden of proving such proportion.' " *Abood, supra*, 431 U.S. at 239-40 n.40 (quoting *Railway Clerks v. Allen*, 373 U.S. 113, 122 (1963)), *quoted in Hudson, supra*, 106 S. Ct. at 1075.

Last Term, in *Hudson, supra*, this Court provided further guidance with regard to the nature of this burden. The Court in *Hudson* stated that a union could not simply "identif[y] the amount that it admittedly had expended for purposes that did not benefit dissenting nonmembers," and then charge nonmembers a fee based upon the remaining percentage of total expenditures. 106 S. Ct. at 1076. Rather, a union that seeks to collect representation fees from nonmembers has the burden of "identifying the expenditures for collective bargaining and contract administration that had been provided for the benefit of nonmembers as well as members—and for which nonmembers as well as members can fairly be charged a fee." *Id.*[6]

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[6] For purposes of argument, we assume in this brief that this requirement applies to the collection of representation fees by exclusive representatives in Indiana, and demonstrate that NPCTA in fact complied with this requirement. It is important to note, however, that the Court in *Hudson* was dealing with the totally different situation in which a union seeks to collect and expend representation fees *before* an impartial determination has been made as to the allowable amount of the fee. In such circumstances, the Court indicated that "[b]asic considerations of fairness, as well as concern for the First Amendment rights at stake, . . . dictate that the potential objectors be given sufficient information to guage the propriety of the union's fee." 106 S. Ct. at 1076. This rationale is not applicable in Indiana: there is no risk to a nonmember employee's First Amendment rights, inasmuch as state law prohibits the involuntary collection of representation fees from public school teachers, by payroll deduction or otherwise, unless and

Despite petitioners' protestations to the contrary, *see* Petition at 13-14, this is precisely the burden of proof that NPCTA was required to, and did in fact, meet in this case. As described more fully in the Statement of the Case, *supra* at 5-6, the Court of Appeals expressly stated that NPCTA and its affiliated organizations "must prove the proportion of their total expenditures which were chargeable to objecting employees," App. 8a, and it was based on this standard that the court concluded that there was sufficient evidence in the record to support the trial court's judgment that NPCTA was entitled to a representation fee of $190.16. Moreover, this was not a new approach for the Indiana courts, for in the leading case upholding the imposition of representation fees under Indiana law, the Court of Appeals previously had concluded that "the burden [is] upon the Association to show nonpolitical use of the funds." *Goetz*, *supra*, 443 N.E.2d at 373. In short, the holding of the Court of Appeals is fully consistent with this Court's agency fee decisions, including its decision in *Hudson*.

To be sure, in the course of its decision the Court of Appeals noted that the amount of the representation fee awarded by the trial court was less than the amount of dues charged to members of NPCTA, and that this reduction "reflect[ed] the proportion of each organization's budget which was allocated for non-chargeable political or ideological activities, according to internal estimates." App. 7a. With this language, however, the court plainly did not mean to suggest that NPCTA had failed to meet its burden of proving chargeable expenditures, for that would have been flatly inconsistent both with its own statement three paragraphs later, App. 8a ("NPCTA, ISTA, and NEA must prove the proportion of their total expenditures which were chargeable to objecting employees"), and with established Indiana law on the subject,

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until there has been a final court judgment against the teachers awarding a specified representation fee to their exclusive representative.

see Goetz, supra, 443 N.E.2d at 373. Rather, this statement merely reflected the fact that, during the trial, NPCTA did more than was required: it not only proved chargeable expenditures, but also identified those expenditures which could not be included in the representation fee.[7]

Petitioners' assertion that the Court of Appeals based the representation fee on "Union Dues Less A Union-Determined Rebate Amount," Petition at i, rather than on proof of NPCTA's chargeable expenditures, reflects a total misunderstanding of the role that membership dues played in the court's calculation of the fee. The dues were not used by the court to alter in any way the requirement that "NPCTA, ISTA, and NEA must prove the proportion of their total expenditures which were chargeable to objecting employees." App. 8a. It was only *after* that requirement had been satisfied that dues were used as a benchmark against which to calculate the allowable representation fee. Simply stated, once sufficient evidence had been introduced to establish the percentage of the total expenditures of NPCTA, ISTA, and NEA that "were 'necessarily or reasonably incurred for the purpose of performing [NPCTA's] duties [as] an exclusive representative,' " App. 11a (quoting *Ellis, supra*, 466 U.S. at 448), the court applied that percentage to the dues charged to NPCTA members to determine the amount of the representation fee.

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[7] There is one other paragraph in the Court of Appeals' opinion that, on its face, may appear inconsistent with this Court's decision in *Hudson*. *See* App. 7a. Because there was sufficient evidence in the record with regard to NPCTA's chargeable expenditures to support the trial court's judgment, however, this paragraph was completely unnecessary to the Court of Appeals' holding and therefore cannot provide the basis for review by this Court. *See Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837, 842 (1984) (this Court "reviews judgments, not statements in opinions"); *Black v. Cutter Laboratories*, 351 U.S. 292, 297-98 (1956) (same).

This use of dues as the final step in the representation fee calculation process finds ample support in the decisions of this Court, *see, e.g., Abood, supra*, 431 U.S. at 238 (citing *Machinists v. Street*, 367 U.S. 740, 774-75 (1961), for remedy of "restitution of a fraction of union dues paid equal to the fraction of total union expenditures that were made for political purposes"), and is in accord with the approach taken in various statutes authorizing the collection of representation fees, *see, e.g.*, 45 U.S.C. § 152, Eleventh (Railway Labor Act provision linking involuntary membership fees to dues); Mich. Comp. Laws § 423.210(1)(c) (providing that representation fees for Michigan public employees may be "equivalent to the amount of dues uniformly required of members"); N.J.S.A. 34:13A-5.5(b) (providing that representation fees for New Jersey public employees may not "exceed 85% of the regular membership dues").

Petitioners contend that *Hudson* supports their position, but they are mistaken. There is nothing in that decision that disallows a cross-reference to dues for purposes of calculation *after* a union has, as NPCTA did here, proven the percentage of its total expenditures that is chargeable to nonmembers. Although a union's total expenditures may not in each and every year be precisely the same as its total dues income, the Court in *Hudson* obviously intended to allow for this type of minimal discrepancy when it reaffirmed that " '[a]bsolute precision' in the calculation of the charge to nonmembers cannot be 'expected or required.' " 106 S. Ct. at 1076 n.18 (quoting *Allen, supra*, 373 U.S. at 122, and *Abood, supra*, 431 U.S. at 239-40 n.40). Indeed, both the Court of Appeals and the Supreme Court of Indiana specifically considered the propriety of NPCTA's representation fee in light of *Hudson*. Thus, petitioners emphasized the alleged conflict between the decision in this case and the March 4, 1986 decision in *Hudson* when filing their motion for rehearing in the Court of Appeals and their petition to

transfer the case to the Supreme Court of Indiana. Those courts summarily denied petitioners' requests on March 26, 1986 and July 7, 1986, respectively. *See* App. 17a, 18a.[8]

In short, the first Question Presented in the Petition for Certiorari is based on a mischaracterization of the decision of the Court of Appeals of Indiana, and therefore cannot properly provide the basis for review by this Court.

II. THE CONCLUSION OF THE COURT OF APPEALS OF INDIANA THAT THERE WAS SUFFICIENT EVIDENCE IN THE RECORD TO INCLUDE PAYMENTS TO ISTA AND NEA IN THE REPRESENTATION FEE DOES NOT WARRANT REVIEW BY THIS COURT

Petitioners do not contend that "amounts spent by ISTA and NEA in support of collective bargaining activities by NPCTA are not chargeable to nonmembers."

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[8] Petitioners also seek to demonstrate that the representation fee was excessive by comparing total expenditures by NPCTA, ISTA, and NEA for the 1980-81 school year to the number of "employees in [NPCTA's bargaining] unit" and "potential ISTA [and NEA] members" during that year. *See* Petition at 4-5. Even assuming, *arguendo*, that petitioners correctly state the number of employees represented and dollars expended, these numbers are explained by the annual fluctuations that are inherent in any union's budgetary process. Despite these fluctuations, unions almost invariably choose to assess a flat rate of dues on their members, rather than constantly changing their dues structure to account for annual variations in expenditures. The same administrative latitude surely must be available for representation fees. *Cf. Hudson, supra*, 106 S. Ct. at 1076 n.18 ("the Union cannot be faulted for calculating its fee on the basis of its expenses during the preceding year"). Indeed, NPCTA's expenditures for 1980-81 were somewhat lower than in other years because it was in the middle of a three-year collective bargaining agreement with the School Corporation. The record shows that in subsequent years, when NPCTA returned to the bargaining table, total expenditures actually exceeded total revenue from dues, and the carryover from the 1980-81 school year was used to cover the shortfall.

Petition at 20. To the contrary, petitioners concede that, "if proved, they could be charged a pro rata share of such costs." *Id.* *See Hudson, supra,* 106 S. Ct. at 1076 n.18 (indicating that, upon proper showing, a union's payments "to its affiliated state and national labor organizations" may be included in a representation fee). What petitioners do contend is that the Court of Appeals erred when it included payments to ISTA and NEA in the representation fee "because NPCTA presented no evidence of actual expenditures by its affiliates for the petitioners' bargaining unit, [and] NPCTA failed to carry its burden of proof." Petition at 20.

Although this contention simply disregards the record in this case,[9] we oppose petitioners' request for review on a more basic ground. Their argument relates solely to conclusions reached by the Court of Appeals with regard to the sufficiency of the evidence presented in the trial court. When all is said and done, petitioners simply disagree with the holding of the Court of Appeals that:

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[9] As explained more fully in the Statement of the Case, *supra* at 6-8, the Court of Appeals found ample evidence in the record to demonstrate that ISTA and NEA provided "direct assistance to NPCTA in performing its duties as the teachers' exclusive representative," including training and assistance in the area of collective bargaining, App. 10a-11a, expert assistance on topics such as curriculum development and textbook selection, App. 11a, meetings providing information and training in collective bargaining techniques and other operational needs, App. 11a, and access to lawyers, economists, negotiators, researchers, and other expert personnel to assist NPCTA in its role as exclusive representative, App. 5a. As succinctly stated by the Court of Appeals:

> Were NPCTA to hire [these experts], there would be little dispute that they could charge a fair share of the cost to the nonmember teachers. Instead, they have chosen to pay a fixed, yearly amount for the continued availability of such services. [Petitioners] cannot force NPCTA to abandon this approach, nor should they be allowed to benefit from the services of ISTA and NEA without paying a fair share of the cost of their continued availability. App. 5a (citing *Abood, supra,* 431 U.S. at 221).

> There was sufficient evidence that the payments to ISTA and NEA were "necessarily or reasonably incurred for the purpose of performing [NPCTA's] duties [as] an exclusive representative." App. 11a (quoting *Ellis, supra*, 461 U.S. at 448).

This disagreement clearly does not present a question that warrants review by this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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